

**HOUSE . . . . . No. 2441**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Colleen M. Garry**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act providing for binding arbitration for fire fighters and police officers.

PETITION OF:

NAME:

Colleen M. Garry

DISTRICT/ADDRESS:

36th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2542 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT PROVIDING FOR BINDING ARBITRATION FOR FIRE FIGHTERS AND POLICE OFFICERS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. If an employee organization duly recognized as representing the firefighters or police  
2 officers of a city, town or district is engaged in an impasse with said city, town or district which has  
3 continued for thirty days after the publication of the fact-finders report pursuant to section nine of chapter  
4 one hundred and fifty E of the General Laws, or, if the parties have mutually waived the fact-finding  
5 provisions contained in said section nine of said chapter one hundred and fifty E, said employee  
6 organization shall petition the board to make an investigation. If, after an investigation, the board  
7 determines that:

- 8 1. the requirements of section nine of said chapter one hundred and fifty E have been complied with in  
9 good faith by the employee organization;
- 10 2. thirty days have passed since the date of publication of the fact-finding report pursuant to said section  
11 nine;
- 12 3. the proceedings for the prevention of any prohibited practices have been exhausted, provided that any  
13 such complaints have been filed with the commission prior to the date of the fact finder's report; and
- 14 4. an impasse exists, the board shall notify the employer and the employee organization that the issues in  
15 dispute shall be resolved by a three-member arbitration panel, or when the parties mutually agree, the  
16 board shall select a single arbitrator in lieu of the arbitration panel.

17 Said panel shall be comprised of three arbitrators, one selected by the employer, one selected by the  
18 employee organization, and a third impartial arbitrator, who shall act as chairman of the panel, who shall  
19 be selected by the two previously selected arbitrators. In the event that either party fails to select an  
20 arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select  
21 a third arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or  
22 arbitrators necessary to complete the panel, which shall act with the same force and effect as if the panel  
23 had been selected without intervention of the board.

24 In the event that the parties mutually elect to use a single arbitrator, selected by the board, the parties shall  
25 immediately request the board to appoint said arbitrator, who shall act with the same force and effect as if  
26 a three member panel had been selected by the parties.

27 The single arbitrator or the arbitration panel acting through its chairman, shall conduct a hearing within  
28 ten days after the date of appointment of its chairman, at a place within the locality of the municipality  
29 involved, where feasible. The chairman shall give at least seven days notice in writing to each of the other  
30 arbitrators. The chairman or single arbitrator shall give like notice to the representative of the municipal  
31 employer and employee organizations of the time and place of such hearing.

32 The single arbitrator or chairman shall preside over the hearing and shall take testimony. Upon  
33 application and for good cause shown, a person, labor organization, or governmental unit having  
34 substantial interest therein may be granted leave to intervene by the arbitration panel. The proceedings  
35 shall be informal. Any oral or documentary evidence and other data deemed relevant by the arbitration  
36 panel or single arbitrator may be received into evidence. The arbitrators shall have the power to  
37 administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of  
38 books, records, and other evidence relative to or pertinent to the issues presented to them for  
39 determination. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any  
40 witness, party, or attorney is guilty of any contempt while in attendance at any hearing, the arbitration  
41 panel or single arbitrator may, or the district attorney if requested, shall invoke the aid of the superior  
42 court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate  
43 order.

44 A record of the proceedings shall be kept, and the chairman or single arbitrator shall arrange for the  
45 necessary recording service. Transcripts may be ordered at the expense of the party ordering them, but the  
46 transcripts shall not be necessary for an award by the panel or single arbitrator. The hearing may be  
47 continued at the discretion of the panel or single arbitrator and shall be concluded within forty days from  
48 the time of commencement. At the conclusion of the hearing, each party shall submit a written statement  
49 containing its last and best offer for each of the issues in dispute to the panel or single arbitrator, who  
50 shall take said statements under advisement. Within ten days after the conclusion of the hearing, a  
51 majority of the panel, or the single arbitrator, shall select as the last and best arbitration award either the  
52 employer's written statement of its last and best offer, the employee organization's written statement of  
53 its last and best offer, or the recommendation of the fact-finder, if a fact-finding report and  
54 recommendations have been issued, and immediately shall give written notice of the selection to the  
55 parties. The selection shall be final and binding upon the parties and upon the appropriate legislative  
56 body. Within thirty calendar days of the last and best offer selection and award, the impartial chairperson  
57 of the arbitration panel or, the single arbitrator, shall issue a written opinion inclusive of an analysis of all  
58 statutory factors applicable to the proceedings.

59 At any time before the rendering of an award, the chairman of the arbitration panel or single arbitrator, if  
60 he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for  
61 further collective bargaining for the period not to exceed three weeks and notify the board of the remand.  
62 If the dispute is remanded for further collective bargaining the time provisions of this act shall be  
63 extended for a time period equal to that of the remand.

64 In the event that the representatives of the parties mutually resolve each of the issues in dispute and agree  
65 to be bound accordingly, said representatives may, at any time prior to the final decisions by the panel, or  
66 single arbitrator, request that the arbitration proceedings be terminated, the panel, acting through its  
67 chairman or single arbitrator, shall terminate the proceedings.

68 The factors among others, to be given weight by the arbitration panel or single arbitrator in arriving at the  
69 decision shall include:

70 (1) The financial ability of the municipality to meet costs. Such factors which shall be taken into  
71 consideration shall include but not be limited to: (a) the city, town or district's state reimbursements and  
72 assessments; (b) the city, town or district's long and short term bonded indebtedness; (c) the city, town or  
73 district's estimated share in the metropolitan district commission deficit;  
74 or (d) the city, town, or district's estimated share in the Massachusetts Bay Transportation Authority's  
75 deficit; and (e) consideration of the average per capita property tax burden, average annual income of  
76 members of the community, the effect any accord by the panel or single arbitrator might have on the  
77 respective property tax rates of the city or town.

78 (2) The interests and welfare of the public.

79 (3) The hazards of employment, physical, educational and mental qualifications, job training and skills  
80 involved.

81 (4) A comparison of wages, hours and conditions of employment of the employees involved in the  
82 arbitration proceedings with the wages, hours and conditions of employment of other employees  
83 performing similar services and with other employees generally in public and private employment in  
84 comparable communities.

85 (5) The decisions and recommendations of the fact-finder, if any.

86 (6) The average consumer prices for goods and services, commonly known as the cost of living.

87 (7) The overall compensation presently received by the employees, including direct wages and fringe  
88 benefits.

89 (8) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

90 (9) Such other factors, not confined to the foregoing, which are normally or traditionally taken into  
91 consideration in the determination of wages, hours and conditions of employment through voluntary  
92 collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public  
93 service or in private employment.

94 (10) The stipulation of the parties.

95 Any determination or decision of the arbitration panel or single arbitrator if supported by material and  
96 substantive evidence on the whole record shall be binding upon the parties and may be enforced at the  
97 instance of either party, the single arbitrator or the arbitration panel in the superior court in equity;  
98 provided however, that the scope of arbitration in police matters shall be limited to wages, hours, and  
99 conditions of employment and shall not include the following matters of inherent managerial policy; the  
100 right to appoint, promote, assign, and transfer employees; and provided, further, that the scope of  
101 arbitration in firefighter matters shall not include the right to appoint and promote employees.

102 Assignments shall not be within the scope; provided, however, that the subject matter of initial station  
103 assignment upon appointment or promotion shall be within the scope of arbitration. The subject matter of  
104 transfer shall not be within the scope of arbitration; provided however, that the subject matters of  
105 relationship of seniority to transfers and disciplinary and punitive transfers shall be within the scope of  
106 arbitration. Notwithstanding any other provisions of this chapter to the contrary, no municipal employer  
107 shall be required to negotiate over subjects of minimum manning of shift coverage, with an employee  
108 organization representing municipal police officers and firefighters.

109 The commencement of a new municipal finance year prior to the final awards by the arbitration panel  
110 shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the  
111 arbitration panel or its award. Any award of the arbitration panel may be retroactive to the expiration date

112 of the last contract.

113 If a municipal employer, or an employee organization willfully disobeys a lawful order of enforcement  
114 pursuant to this section, or willfully encourages or offers resistance to such order, whether by strike or  
115 otherwise, the punishment for each day that such contempt continues may be a fine for each day to be  
116 determined at the discretion of said court.

117 Each of the parties shall provide compensation for the arbitrator which he has selected pursuant to this  
118 section. The remaining costs of arbitration proceedings under this section shall be divided equally  
119 between the parties. Compensation for the arbitrators shall be in accordance with a schedule of payment  
120 established by the American Arbitration Association.

121 No member of a unit of municipal police officers or firefighters who is employed on a less than full-time  
122 basis shall be subject to the provisions of this section.